

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

CHARLES L. SCINTA

Case No. 97-13284 K

Debtor

MEMORANDUM AND ORDER

Principally for the reasons set forth by Mr. Jones in his letter of October 17, 1997, the Court finds that the case of *Rexnord Holdings v. Bidermann*, is inapposite. I would add only that the Niagara County Clerk (in the case at Bar) was acting at the judgment creditor's request, not at the Court's request. This too distinguishes the present case from *Rexnord*, and makes it clear that the County Clerk's act must be viewed as the judgment creditor's "act to create" a lien, for purposes of § 362(a)(4). The fact that the creditor was entirely passive after the filing of the petition simply means that it is not guilty of contempt or of a wilful violation of the stay; it does not mean that the postpetition lien that it obtained by virtue of its prepetition actions must stand.

Similarly, the cited case of *Morton v. National Bank (In re Morton)*, 866 F. 2d 561 (2d Cir. 1989), dealt only with a creditor's maintaining of the status quo, not with the acquiring of a new lien.

The Debtor's motion to set aside the lien as having been acquired in violation of 11 U.S.C. § 362(a)(4) is granted. Debtor's counsel shall submit a suitable order, after the creditor's counsel approves its form.

SO ORDERED.

Dated: Buffalo, New York
October 22, 1997

/s/ Michael J. Kaplan

Michael J. Kaplan, U.S.B.J.